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10 ATTORNEYS FOR PLAINTIFF

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 JUVENAL ROBLES and ABEL FIGUEROA,  
individually and on behalf of a class of  
15 similarly situated individuals,

16 Plaintiffs,

17 v.

18 LUCKY BRAND DUNGAREES, INC., a  
Delaware corporation, KIRSHENBAUM  
19 BOND SENEAL & PARTNERS LLC f/k/a  
KIRSHENBAUM BOND & PARTNERS  
20 LLC, a Delaware limited liability company,  
d/b/a Lime Public Relations + Promotion, and  
21 KIRSHENBAUM BOND & PARTNERS  
22 WEST LLC, a Delaware limited liability  
company,

23 Defendants.  
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Case No. 10-cv-04846 MMC

**STIPULATION AND ~~PROPOSED~~  
ORDER STAYING LITIGATION  
PENDING CLASS ACTION  
SETTLEMENT; DIRECTIONS TO  
PARTIES**

The Honorable Maxine M. Chesney

1 KIRSHENBAUM BOND SENECA &  
2 PARTNERS LLC f/k/a KIRSHENBAUM  
3 BOND & PARTNERS LLC, a Delaware  
4 limited liability company, d/b/a Lime Public  
Relations + Promotion, and KIRSHENBAUM  
BOND & PARTNERS WEST LLC, a  
Delaware limited liability company,

5 Third-Party Plaintiffs.

6 v.

7 MERKLE INC., a Maryland Corporation,  
8

9 Third-Party Defendant and  
10 Fourth-Party Plaintiff.

11 v.

12 RGAR HOLDINGS, LLC, a Florida limited  
13 liability company, formerly known as TAKE 5  
SOLUTIONS, LLC., a Florida limited liability  
14 company, RICHARD GLUCK,  
ALEXANDER RADETICH, JOHN DOE I,  
15 and JOHN DOE II,

16  
17 Fourth-Party Defendants.  
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1 Plaintiffs Juvenal Robles and Abel Figueroa (together, “Plaintiffs”), Defendant Lucky Brand  
2 Dungarees, Inc. (“Lucky”), Defendants Kirshenbaum Bond Senecal & Partners LLC, f/k/a  
3 Kirshenbaum Bond & Partners LLC, d/b/a Lime Public Relations + Promotion and Kirshenbaum  
4 Bond & Partners West LLC (together, “Lime”), and Third-Party Defendant Merkle Inc. (“Merkle”),  
5 (collectively, the “Parties”), by and through their counsel, stipulate as follows:

6 1. Plaintiff Robles filed his Class Action Complaint on October 26, 2010, alleging  
7 Defendant Lucky violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending an  
8 allegedly unsolicited text message to Plaintiff’s cellular telephone in the summer of 2008. (Dkt. 1.)

9 2. Lucky answered the Complaint, asserting, among other things, various defenses that  
10 included issues involving consent, authorization, and other elements of Plaintiff’s statutory claim.  
11 (Dkt. 15.)

12 3. On January 21, 2011, Judge Fogel held an initial case scheduling conference and  
13 ordered the Parties to participate in a settlement conference before Magistrate Judge Lloyd and to  
14 return and report on the result of that conference. (Dkt. 18.)

15 4. Plaintiff Robles and Defendant Lucky participated in a settlement conference before  
16 Judge Lloyd on April 29, 2011. Lime, Merkle and RGAR Holdings, LLC (“RGAR”), who were all  
17 third-parties at the time, also participated in the settlement conference. At the settlement conference,  
18 Plaintiff Robles, Defendant Lucky, and the third-parties candidly discussed their various respective  
19 positions about the litigation and settlement. During these discussions, it was determined that  
20 limited focused discovery or information was required to continue productive discussions toward  
21 resolution. Upon the recommendation of Judge Lloyd, Plaintiff Robles, Defendant Lucky, the third-  
22 parties, and insurers agreed to return for a further settlement conference. (*See* Dkt. 32.)

23 5. Prior to the further settlement conference, Plaintiff Robles filed an Amended  
24 Complaint. (Dkt. 39.) The Amended Complaint alleges a single claim for violation of the TCPA,  
25 under the same general allegations stated in the original Complaint, on behalf of both  
26 Plaintiff Robles and Plaintiff Figueroa. The Amended Complaint also adds Lime as a named  
27 defendant.  
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1           6.       Lime and Lucky answered the Amended Complaint. (Dkts. 45, 48.) Lime also filed  
2 a Third-Party Complaint against Merkle. (Dkt. 44). Merkle answered the Third-Party Complaint  
3 and filed a Fourth-Party Complaint againstRGAR. (Dkts. 64, 66.)

4           7.       The Parties participated in a further settlement conference before Judge Lloyd on  
5 September 21, 2011. The Parties were able to advance their settlement discussion during the second  
6 settlement conference, but did not reach a final agreement. The Parties agreed to continue those  
7 discussions in the context of a full-day mediation and, in the interim, to limit activity in the case to  
8 only discovery necessary to complete mediation. The Parties thereafter scheduled a full-day  
9 mediation before the Honorable Nicholas H. Politan (Ret.) in West Palm Beach, Florida and set the  
10 mediation for December 8, 2011.

11           8.       On January 26, 2012, the Parties attended a formal mediation with Judge Politan  
12 where the terms of a global settlement were negotiated. After a full-day mediation, the Parties  
13 made further progress with the assistance of Judge Politan and at the end of the mediation session  
14 Judge Politan presented a mediator's proposal, of which the Parties were to report their acceptance  
15 or rejection by February 29, 2012. During the pendency of this mediator's proposal response  
16 period, Judge Politan unexpectedly passed away. However, not all of the Parties ultimately  
17 accepted Judge Politan's proposal.

18           9.       On March 23, 2012, counsel for the Parties attended the Joint Case Management  
19 Conference scheduled by the Court. During the CMC, the Parties informed the Court that  
20 settlement negotiations were ongoing and that the Parties were considering returning to mediation  
21 with the Honorable Eugene Lynch (Ret.). Although the Parties agreed to continue settlement  
22 discussions, the Court also entered a scheduling Order setting June 4, 2012 as the deadline to amend  
23 all pleadings as well as several class certification discovery deadlines beginning in July 2012. (See  
24 Dkt. 83.)

25           10.       During subsequent discussions leading up to the scheduling of the mediation with  
26 Judge Lynch, the Parties were able to reach an agreement as to all material terms of a class action  
27 settlement of this matter.

1           11.     The Parties anticipate that the settlement papers will be executed, and that  
2     Plaintiffswill move for preliminary approval of the class action settlement, within forty-five (45)  
3     days.

4           12.     The Parties therefore stipulate to staying all pending motion and discovery deadlines  
5     in this case to allow them time to memorialize the settlement terms.

6  
7           **IT IS SO STIPULATED.**

8  
9     Dated: May 25, 2012

10                           SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

11                           By                           /s/ Craig Cardon  
12   CRAIG CARDON  
13   BRIAN R. BLACKMAN  
14   Attorneys for  
  Defendant LUCKY BRAND DUNGAREES, INC.

15     Dated: May 25, 2012

16                           EDELSON MCGUIRE LLC

17                           By                           /s/ Ryan D. Andrews  
18   RYAN D. ANDREWS  
19   SEAN REIS  
  Attorneys for  
  Plaintiffs JUVENAL ROBLESand ABEL FIGUEROA

20     Dated: May 25, 2012

21                           WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP

22  
23                           By                           /s/ Sara J. Savage  
24   DAVID SHEIFFER  
25   SARA J. SAVAGE  
  Attorneys for  
  Defendants KIRSHENBAUM BOND SENEAL &  
26   PARTNERS LLC and KIRSHENBAUM BOND &  
27   PARTNERS WEST LLC  
28

1 Dated: May 25, 2012

2 LATHAM & WATKINS LLP

3 By /s/ Peter Winik

4 PETER WINIK

5 MATTHEW RAWLINSON

6 SARAH GRAGERT

7 Attorneys for

8 Third-Party Defendant MERKLE, INC.

**CERTIFICATION**

I, Ryan D. Andrews, am the ECF User whose identification and password are being used to file this *Stipulation And [Proposed] Order Staying Litigation Pending Class Action Settlement*. In compliance with General Order 45.X.B., I hereby attest that the Counsel whose electronic signatures appear on this document have concurred in this filing and that the same will be delivered to those registered with the Court's CM/ECF system.

Dated: May 25, 2012

EDELSON MCGUIRE LLC

By /s/ Ryan D. Andrews  
RYAN D. ANDREWS  
Attorneys for  
Plaintiffs JUVENAL ROBLES and ABEL FIGUEROA

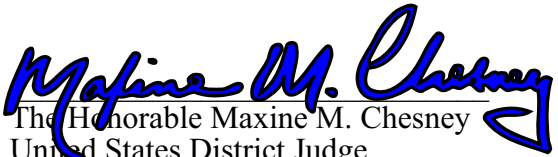
**ORDER**

Having considered the Parties' Stipulation and good cause appearing, this litigation, including amended pleading deadlines, motion deadlines, and all discovery obligations, shall be stayed for a period of forty-five (45) days from the date of this Order.

The parties are directed to file, no later than July 13, 2012, a Joint Status Report, said deadline to stand vacated without further order of the Court in the event plaintiffs have filed, on or before July 13, 2012, a motion for preliminary approval of the settlement.

**IT IS SO ORDERED.**

Dated: May 30, 2012

  
The Honorable Maxine M. Chesney  
United States District Judge